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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 16 of General Assembly resolution 68/115. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 68/115, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-ninth session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190 and A/68/226), the Chair of the Security Council Informal Working Group on General Issues of Sanctions transmitted the report of the Working Group (S/2006/997, annex) to the Security Council. Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring, but the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as set out in document S/2005/841, took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

5. Furthermore, in paragraph 15 of its resolution 1737 (2006), paragraph 21 of its resolution 1970 (2011), paragraph 34 of its resolution 2134 (2014) and paragraph 13 of its resolution 2140 (2014), the Security Council decided that the assets freeze imposed under those resolutions would not prevent a designated person or entity from making payments due under a contract entered into prior to the listing of such

[1] See Security Council resolutions 1452 (2002) (as amended by resolution 1735 (2006)), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1737 (2006), 1844 (2008), 1907 (2009), 1970 (2011) (as updated by resolution 2009 (2011)), 2134 (2014) and 2140 (2014).

a person or entity, provided that certain conditions had been met, and after notification by the relevant States to, respectively, the Committee established pursuant to resolution 1737 (2006), the Committee established pursuant to resolution 1970 (2011), the Committee established pursuant to resolution 2127 (2013) and the Committee established pursuant to resolution 2140 (2014) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

6. To date, through his 90-day reports to the Security Council, the Chair of the Committee established pursuant to resolution 1737 (2006) has informed the Council of a total of 65 such notifications received.[2] Similarly, in periodic reports to the Council, the Chair of the Committee established pursuant to resolution 1970 (2011) informed the Council of a total of 45 notifications received.[3]

7. In addition, in paragraph 17 of resolution 1803 (2008), paragraph 27 of resolution 1973 (2011) and paragraph 13 of resolution 2087 (2013), the Council aimed to ensure that persons or entities, including in third States, are not held responsible for failure to comply with a contractual or other obligation when such failure is due to measures imposed by the Council in its resolutions.

8. Last, in paragraph 21 of resolution 1874 (2009), the Security Council emphasized that all Member States should comply with the relevant measures relating to the Democratic People's Republic of Korea without prejudice to the activities of the diplomatic missions in the country, pursuant to the Vienna Convention on Diplomatic Relations. On 26 June 2014, the Committee established pursuant to resolution 1718 (2006) adopted an implementation assistance notice on diplomatic missions in the Democratic People's Republic of Korea, which took into consideration replies received from Member States and the report on this issue prepared by the Panel of Experts established pursuant to resolution 1874 (2009) (S/2014/147). Some Member States noted difficulties of various types and severity, while others stated that they had experienced no problems and that the most likely cause of operational difficulties was related to the country's economic policies and State restrictions. The implementation assistance notice stated that the Committee would periodically monitor the situation and seek ways to improve compliance with the relevant Security Council resolutions in this context.

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[2] See S/PV.5702, S/PV.5743, S/PV.5807, S/PV.5853, S/PV.5909, S/PV.5973, S/PV.6142, S/PV.6235, S/PV.6280, S/PV.6384, S/PV.6442, S/PV.6502, S/PV.6563, S/PV.6607, S/PV.6697, S/PV.6737, S/PV.6786, S/PV.6888, S/PV.6930, S/PV.6999, S/PV.7082 and S/PV.7146. The 90-day report of 9 September 2009, which is also relevant, was not delivered at a public meeting; the text is available, however, from the Committee's website: http://www.un.org/sc/committees/1737/pdf/90day.pdf.

[3] See S/PV.6566, S/PV.6622, S/PV.6698, S/PV.6857, S/PV.6934, S/PV.6981, S/PV.7031, S/PV.7075, S/PV.7130 and S/PV.7194. The periodic report of 8 November 2012 was not delivered in its entirety at the public meeting; the full text is available, however, from the Committee's website: http://www.un.org/sc/committees/1970/pdf/chairman-november2012.pdf.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

9. In its resolution 59/45, the General Assembly reaffirmed the important roles of the Assembly and the Economic and Social Council in the area of assistance to third States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. Should consultations be requested by those States, the Assembly and the Economic and Social Council will mobilize and monitor, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by sanctions.

A. General Assembly

10. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 18 to 26 February 2014. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions (see A/69/33, chap. II (A)).

B. Economic and Social Council

11. The Economic and Social Council approved its programme of work (see E/2014/1/Rev.1) and decided to include in the agenda of the coordination and management meeting a sub-item, 16 (k), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 13 June 2014 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

12. In accordance with the relevant resolutions of the General Assembly,[4] the competent units within the Secretariat have maintained their capacity to monitor information pertaining to any special economic problems in third States arising from the application of preventive or enforcement measures imposed by the Security Council, to evaluate any appeals to the Security Council made by such affected third States under the provisions of Article 50 of the Charter of the United Nations, and to identify solutions to the special economic problems of those States.

13. As noted in previous reports,[5] the need to explore practical and effective measures of assistance to the affected third States has been reduced considerably

[4] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115, 65/31, 66/101, 67/96 and 68/115.

[5] See A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190 and A/68/226.

because the shift from comprehensive to targeted sanctions has reduced the incidence of unintended harm to third States. In fact, no official appeals by third States to monitor or evaluate unintended adverse impacts on non-targeted countries have been conveyed to the Department of Economic and Social Affairs since June 2003.

14. The shift to targeted sanctions has implied corresponding changes in the methodological approaches used to assess the impacts of sanctions on third States. Detailed case-by-case assessments of the possible adverse impact on individual countries, both targeted and non-targeted countries, would be required. The impact of sanctions would need to be evaluated against a baseline drawn from recent historical trends in economic and social conditions in the countries or region. Some of the technical methods used to review and assess special economic problems of third States affected by sanctions were discussed in detail in the report of the Informal Working Group on General Issues of Sanctions (S/2006/997, annex), the Sanctions Assessment Handbook[6] and the Field Guidelines for Assessing the Humanitarian Implications of Sanctions[7] published by the Inter-Agency Standing Committee.

15. In the absence of Article 50 appeals conveyed to the Department of Economic and Social Affairs, little progress could be made in developing specific methodologies to make such assessments since these can be elaborated properly only on a case-by-case basis and assessments can be initiated only when corresponding requests by third States are conveyed to the Department of Economic and Social Affairs. The Department will, however, continue to seek opportunities for collaborative work with other relevant parts of the Secretariat and with other international organizations and academic institutions, with a view to keeping abreast of similar and related methodologies in order to be responsive when appeals are made.

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[6] Available from http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4423&type=pdf.

[7] Available from http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4424&type=pdf.